UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD Region 21

THE VINTAGE COUNTRY CLUB

and

Case 21-CA-077097

LABORERS' PACIFIC SOUTHWEST REGIONAL ORGANIZING COALITON, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

THE VINTAGE CLUB

Employer

and

Case 21-RC-073752

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1184, AFL-CIO

Petitioner

REPORT ON OBJECTIONS AND ORDER CONSOLIDATING CASES AND NOTICE OF HEARING

This Report¹ contains my recommendations concerning objections filed by Laborers' International Union of North America, Local 1184, AFL-CIO (herein the Union or Petitioner) to the election conducted on Friday, March 9, 2012.²

¹ This Report has been prepared under Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended.

² The Petition in Case 21-RC-073752 was filed on February 2, 2012. Pursuant to a Stipulated Election Agreement, the collective bargaining unit agreed upon in this matter is composed of: "All full-time and regular part-time Landscape Foremen, Landscapers, Landscapers/ Spray Technicians, Golf Course Landscapers, Golf Course

The Petitioner's objections allege that The Vintage Club (herein the Employer) engaged in the following conduct:

- 1. The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election, segregating employees in the voting unit by area and directing these employees to the 4 voting sites.
- 2. The Employer interfered with the fair operation of the election a process and destroyed the necessary laboratory conditions by, during the period immediately prior to and during the election, assigning various supervisors and/or agents to the election site/polling place to watch the employees as they appeared at the election site to cast their ballots.
- 3. The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election and in a hostile manner, telling employees in the voting is unit who were known Union supporters and who were at or near the election site or who were passing by on their way to the polls to cast their ballots, that if they wanted the Union, they should go and work for the El Dorado Country Club, which is a union country club, instead of the Employer.
- 4. The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by denying the Union and its organizers access to the election site/polling place during the pre-election meeting as a show of force or power by the Employer in full view of the election observers and employees in the voting unit while the observers and employees were assembling to vote.
- 5. By the above and other conduct described in paragraphs 1-4, the Employer has interfered with and coerced eligible voters with regard to the exercise of their Section 7 rights under the National Labor Relations Act and destroyed the atmosphere necessary to conduct a fair election. The above coercive acts and other conduct taking place during the critical pre-election and actual voting period were sufficient to unlawfully affect the results of the election.

As set forth below, I conclude that Petitioner's Objections Nos. 2, 3, and 5 shall be considered at hearing, and herein Order and give Notice of such hearing.³

³ On September 13, 2012, the Petitioner submitted a request to withdraw Objections Nos. 1 and 4. After duly considering the matter, I hereby approve the Petitioner's request to withdraw Objections Nos. 1 and 4.

Procedural Background

The tally of ballots served on the parties at the conclusion of the election showed that of approximately 63 eligible voters, 27 cast ballots for, and 32 against, the Petitioner. There were zero void ballots. There were 4 challenged ballots, which number was insufficient to affect the results of the election at that time. The Petitioner timely filed objections, a copy of which was served on the Employer. A copy of the Petitioner's objections is attached hereto as Attachment A.⁴

The Objections

Petitioner's Objections

Objection No. 2

The Employer interfered with the fair operation of the election a process and destroyed the necessary laboratory conditions by, during the period immediately prior to and during the election, assigning various supervisors and/or agents to the election site/polling place to watch the employees as they appeared at the election site to cast their ballots.

In support of this objection, the Union proffered evidence that the Employer assigned Supervisor Felipe Terrazas as one of its observers during the election. Terrazas' ballot was challenged by the Union at the election, but, inasmuch as the challenges were not determinative, the status of Terrazas was not investigated through that procedure. During the investigation into the allegations contained in Case 21-CA-077097, I have determined that Terrazas is a supervisor within the meaning of the Act, and I have so alleged at Paragraph 5 of a Complaint and Notice of Hearing which issued on September 27, 2012. In the alternative, the Union has submitted evidence that Terrazas is "a person closely aligned with management."

⁴ On March 26, 2012, the Employer filed a Motion to Dismiss the Union's Objections, and the Petitioner filed its Opposition to the Motion thereafter. On April 5, 2012, the Region issued an Order Denying the Employer's Motion To Dismiss Petition. Thereafter, the Employer submitted a Request For Special Permission to Appeal from the Regional Director's Order Denying Employer's Motion to Dismiss Petition. On May 7, 2012, the Board denied the Employer's Appeal of the Regional Director's Order.

It is axiomatic that an employer may not use a supervisor or a person closely aligned with management as an election observer. Once that is established, the objecting party need not demonstrate "actual interference" and the absence of actual interference does not mean the objection is to be overturned. *Mid-Continent Spring Co.*, 273 NLRB 884 (1985) and cases cited therein.

The Employer denies that Felipe Terrazas is a supervisor or an agent or person closely aligned with management.

Objection No. 3

The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election and in a hostile manner, telling employees in the voting is unit who were known Union supporters and who were at or near the election site or who were passing by on their way to the polls to cast their ballots, that if they wanted the Union, they should go and work for the El Dorado Country Club, which is a union country club, instead of the Employer.

In support of this objection, the Union presented evidence that on the day of the election, Employer agent Ulyses Zendejas and an employee sat on a golf cart observing employees as they went in the building to cast their vote. As employees went in the building to vote, Zendejas threatened them and told them in a hostile manner that if they wanted a union to go work for El Dorado Country Club.

The Employer denies that Zendejas is an agent of the Employer.

Objection No. 5

By the above and other conduct described in paragraphs 1-4, the Employer has interfered with and coerced eligible voters with regard to the exercise of their Section 7 rights under the National Labor Relations Act and destroyed the atmosphere necessary to conduct a fair election. The above coercive acts and other conduct taking place during the critical pre-election and actual voting period were sufficient to unlawfully affect the results of the election.

In support of this objection, the Union filed an unfair labor practice charge in Case 21-CA-077097. A Complaint and Notice of Hearing issued in that case on September 27, 2012, alleging

violations of Section 8(a)(1) of the Act, conduct which I have concluded could also be objectionable conduct. A copy of the Complaint and Notice of Hearing is attached hereto as Attachment B.

As noted in the Complaint at paragraphs 7 through 10, Employer supervisors and/or agents engaged in certain conduct which, if true, could warrant setting aside the election. The Employer agents and supervisors, as noted above, are set forth in paragraph 5 of the Complaint.

Conclusion

Inasmuch as the investigation of Petitioner's Objections Nos. 2, 3, and 5 raise substantial and material issues of facts, and inasmuch as it appears that the issues to be decided in resolving the Objections are the same as, or closely related to, issues involved in Case 21-CA-077097, which is being set for hearing, it is concluded that these issues can best be resolved after a hearing in conjunction with the related allegations in Case 21-CA-077097.

Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Petitioner's Objections Nos. 2, 3, and 5 and consolidate

Case 21-RC-073752 for a hearing with Case 21-CA-077097.

Accordingly, pursuant to Sections 102.33 and 102.72 of the Board's Rules,

IT IS HEREBY ORDERED that Cases 21-CA-077097 and 21-RC-073752 be, and they hereby are, consolidated for the purposes of a hearing before an Administrative Law Judge.

PLEASE TAKE NOTICE that during the calendar call commencing at 1:00 p.m.,
PST, on the 5th day of November, 2012, at a location to be determined later, a hearing on the issues
raised by Petitioner's Objections Nos. 2, 3, and 5 and the unfair labor practices alleged in the
Complaint and Notice of Hearing in Case 21-CA-077097, will be conducted before a duly designated
Administrative Law Judge of the Board, at which time and place the parties will have the right to
appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard
Procedures in Formal Hearings Held before the National Labor Relations Board in Unfair Labor

Practice Cases, is attached. The precise order of all cases to be heard during this calendar call will be determined no later than the close of business on the Friday preceding the calendar call.

the purpose of conducting the hearing prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of said challenged ballots and objections. Within the times described by the Board's Rules, any party may file with the National Labor Relations Board, 1099 14th Street, N.W., Washington D.C., 20570, an original and seven copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties, and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

Dated at Los Angeles, California, on September 28, 2012.

Olivia Garcia

Regional Director, Region 21 National Labor Relations Board 888 South Figueroa Street, Ninth Floor

Los Angeles, CA 90017-5449

Attachments

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 21

THE VINTAGE COUNTRY CLUB,
Employer,

CASE NO. 21-RC-073752

and

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OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION ON BEHALF OF UNION

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 1184, AFL-CIO,

Union.

Pursuant to Section 102.69 of the National Labor Relations
Board's Rules and Regulations, as amended, Petitioner Laborers'
International Union of North America, Local Union No. 1184, AFL-CIO
("Union"), hereby objects to conduct affecting the results of the
election in the above-captioned matter for the following reasons:

OBJECTIONS

The Vintage Country Club ("Employer"), by its officers,
 managers, supervisors, agents and/or supporters, interfered with the

#198644 v1 - Final version Objections to Conduct of Election

EXHIBIT A

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fair operation of the election process and destroyed the necessary laboratory conditions by, during the election, segregating employees in the voting unit by area and directing these employees to the voting site.

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The Employer, by its officers, managers, supervisors, agents and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the period immediately prior to and during the election, assigning various supervisors and/or agents to the election site/polling place to watch the employees as they appeared at the election site to cast their ballots.

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The Employer, by its officers, managers, supervisors, agents and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election and in a hostile manner, telling employees in the voting unit who were known Union supporters and who were at or near the election site or who were passing by on their way to the polls to cast their ballots, that if they wanted the Union, they should go and work for the El Dorado Country Club, which is a union country club, instead of the Employer.

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The Employer, by its officers, managers, supervisors, agents and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by denying the Union and its organizers access to the election site/polling place during the pre-election meeting as a show of force or power by

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the Employer in full view of the election observers and employees in the voting unit while the observers and employees were assembling to vote.

By the above and other conduct described in paragraphs 1-4, the Employer has interfered with and coerced eligible voters with regard to the exercise of their Section 7 rights under the National Labor Relations Act and destroyed the atmosphere necessary to conduct a fair election. The above coercive acts and other conduct taking place during the critical pre-election and actual voting period were sufficient to unlawfully affect the results of the election.

WHEREFORE, for all the foregoing and any other reasons recognized by law, the Union respectfully requests that the Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Date: March 16, 2012

CARLOS R. PEREZ, Member of REICH, ADELL & CVITAN A Professional Law Corporation

R. By:

CARLOS R. PEREZ Attorneys for Laborers' International Union of North America, Local Union No. 1184, AFL-CIO

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD Region 21

THE VINTAGE COUNTRY CLUB

and

Case 21-CA-077097

LABORERS' PACIFIC SOUTHWEST REGIONAL ORGANIZING COALITION, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by the Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL-CIO, herein called the Charging Party. It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that The Vintage Country Club, herein called Respondent, has violated the Act as described below:

- 1. (a) The original charge in this proceeding was filed by the Charging Party on March 20, 2012, and a copy was served on Respondent by regular mail on March 22, 2012.
- (b) The first amended charge in this proceeding was filed by the Charging Party on September 4, 2012, and a copy was served on Respondent by regular mail on September 6, 2012.



- 2. (a) At all material times, Respondent, a California non-profit corporation with principal offices and a facility located at 75-001 Vintage Drive West, Indian Wells, California, herein called the facility, has been engaged in the operation of a private country club.
- (b) In conducting its operations described above in paragraph 2(a), during the 12-month period ending August 31, 2012, a representative period, Respondent derived gross revenues in excess of \$500,000, excluding membership dues and initiation fees.
- (c) During the period of time described above in paragraph 2(b), Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at the facility goods valued in excess of \$5,000 directly from points outside the State of California.
- 3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 4. (a) At all material times, Laborers' International Union of North America Local No. 1184, Laborers' International Union of North America, AFL-CIO, herein called the Union, has been a labor organization within the meaning of Section 2(5) of the Act.
- (b) At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.
- 5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Tim Harder

Equipment and Facilities Supervisor

Felipe Terrazas

Irrigator Foreman

6. At all material times, the following individuals held the positions set forth opposite their respective names and have been have been agents of Respondent within the meaning of Section 2(13) of the Act:

Juan Renteria Irrigator

Ulyses Zendejas Irrigator

- 7. In about February 2012, Respondent, by Juan Renteria and Felipe Terrazas, at the facility, interrogated its employees about their union sympathies and activities by soliciting employees' signatures on an anti-union petition.
- 8. From about mid-February 2012 until March 9, 2012, Respondent, by Tim Harder, intimidated employees by prohibiting an employee from leaving the mechanics' shop area to perform work assignments because of the employee's union activity and support.
- 9. About February 22, 2012, Respondent, by Felipe Terrazas, between holes 2 and 7 at the facility:
 - (a) Interrogated an employee about employees' union activities; and
- (b) Implicitly threatened employees with loss of benefits if they did not sign an anti-union petition.
- 10. About February 28, 2012, Respondent, by Ulyses Zendejas and Felipe

 Terrazas, at the gate to the facility, engaged in surveillance of employees by videotaping them while they were being handed union flyers..
- 11. By the conduct described above in paragraphs 7 through 10, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before October 11, 2012, or postmarked on or before October 12, 2012.

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be date

submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT during the calendar call commencing at 1 p.m. PST, on the 5th day of November, 2012, a hearing will be conducted at a location to be determined later, before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338. The precise order of all cases to be heard on this calendar call will be determined no later than the close of business on the Friday preceding the calendar call.

DATED at Los Angeles, California, this 27th day of September, 2012.

/s/Olivia Garcia

Olivia Garcia, Regional Director Region 21 National Labor Relations Board 888 South Figueroa Street, Ninth Floor Los Angeles, CA 90017-5449

Attachments

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